

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**

OF JUNE 2, 2022

CASE OF DIAL AND DOTTIN v. TRINIDAD AND TOBAGO

HAVING SEEN:

1. The application submitted by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on June 23, 2021; the brief containing pleadings, motions, and evidence (hereinafter "the representatives' brief") submitted by the representatives of the alleged victims (hereinafter "the representatives") on December 20, 2021, and the communication of March 31, 2022, by which the Registrar noted that the deadline set for the State of Trinidad and Tobago to respond to the submission of the case and to the Brief of Pleadings, Motions and Evidence expired on March 14, 2022, but that the State had not submitted its response.
2. The Registrar's note of March 29, 2022, on instruction from the President, granted the request by the alleged victims' representatives for access to the Court's Victims' Legal Assistance Fund.
3. The final lists of proposed declarants submitted by the Inter-American Commission and the representatives on April 8, 2022 and the Representatives' brief of April 25, 2022 in which they indicated that they supported the Commission's request to transfer the expert opinion given by Desmond Allum in the *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*.
4. The Commission's brief of April 29, 2022, indicating that it had "no comments" to make on the representatives' final list of declarants.

CONSIDERING:

1. The procedure for admitting and taking evidence is governed by Articles 35(1)(f), 40(2)(c), 41(1)(c), 46, 47, 48, 50, 52(3), 57 and 58 of the Court's Rules of Procedure (hereinafter "Rules of Procedure").
2. The Commission requested that the expert opinion rendered by Desmond Allum in the *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, be transferred to the instant case, and the representatives requested that the Court admit the statements of the alleged victims Kelvin Dial and Andrew Dottin, as well as the expert testimony of Douglas Mendes QC.
3. The Inter-American Commission, the representatives, and the State were given the right of defense regarding the evidentiary proposals made by each of the parties at different stages of the procedure. Neither the Commission, nor the parties offered any objections to the proposals submitted.

4. This President has decided to admit the declarations of the alleged victims and the expert witness that were proposed by the representatives. As for the Commission's request to transfer to this case the expert opinion rendered by Desmond Allum in the *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, the President notes that the expert statement in that case had addressed "the nature of the 'mandatory death penalty,' the exercise of the prerogative of mercy in Trinidad and Tobago, and other points of the State's domestic criminal law, including the evolution and current status of the law of prosecutorial disclosure," and therefore, this testimony could be useful for judging the present case. He further notes that the State did not challenge the admissibility of this statement and that the representatives supported the Commission's request for transfer. Thus, the President also admits the transfer to this case of the expert opinion rendered by Desmond Allum in the *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*.

5. In view of the arguments by the parties and the Commission, this President will proceed to examine in particular:

- A. The need to hold a public hearing in this case
- B. Use of the Court's Victims' Legal Assistance Fund

A. The need to hold a public hearing in this case

6. The President recalls Article 15 of the Court's Rules of Procedure, stating that "[t]he Court shall hold hearings when it deems it appropriate to do so." This grants the Court or its President a specific power to be exercised reasonably in view of the nature of the case, the procedural requirements that arise from its particular characteristics, and the need to protect the rights of the parties.¹

7. Based on the study of the application submitted by the Inter-American Commission and the representatives' brief, as well as the annexes thereto, the President notes that, *prima facie*, and without prejudice to any views the Court may eventually adopt, the cause of action in this case is of a legal nature. The President also notes that statements by the representatives can be submitted as written affidavits of sworn statements before a public attestor.

8. In view of the above, the President has decided that it is not necessary to hold a public hearing in this case for reasons of procedural economy, taking into account the particular features of the case and the need to manage proceedings effectively.

B. Use of the Court's Victims' Legal Assistance Fund

9. A note from the Registrar on March 29, 2022 informed the parties and the Commission that the request submitted by the representatives of the alleged victims for access to the Court's Victims' Legal Assistance Fund was admissible, and the necessary financial support was granted to cover the expenses incurred for the presentation of up to three statements, either in a hearing or by affidavit.

10. Therefore, considering that no public hearing will take place in this case, the President authorizes allocation of economic assistance to cover the reasonable expenses of formalizing (the costs of the public attestor) and mailing the affidavits of the three statements offered

¹ Cfr. *Case of Goiburú et al. v. Paraguay*. Order by the President of the Inter-American Court of Human Rights of May 5, 2006, Considering clause 11, and *Case of Moya Solís v. Peru*. Order of the President of the Inter-American Court of Human Rights of February 1, 2021, Considering clause 6.

by the representatives. To this end, the representatives must send the cost quotation for formalizing the sworn statements in the country of residence of each declarant.

11. As required by Article 4 of the Rules for the Operation of the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter "Rules for the Operation of the Victims' Legal Assistance Fund"), the Registrar will open a file on the costs of this case, to contain records of all expenditures incurred in accordance with the parameters authorized by the President.

12. Finally, the President recalls that, according to Article 5 of the Rules for the Operation of the Victims' Legal Assistance Fund, the State will be promptly informed of the expenses incurred in application of the Victims' Legal Assistance Fund, and allow it to present its observations, should it wish to do so, within the term established for this purpose.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with Article 25(2) of the Court's Statute and Articles 4, 15(1), 26(1), 31(2), 35(1), 40(2), 41(1), 45 a 48, 50 a 56, 58 and 60 of the Rules of Procedure and the Rules of the Operation of the Victims' Legal Assistance Fund,

DECIDES:

1. To require, for the reasons stated in the present Order, in accordance with the principle of procedural economy and pursuant to Article 50(1) of the Rules of Procedure, the following persons proposed by the representatives to render their statements by affidavit:

A. Alleged victims

(proposed by the representatives)

- 1) *Kelvin Dial*, who will testify about the facts of the present case, particularly in relation to the conduct of the criminal proceedings brought against him and the alleged conditions he was made to suffer in pre-trial and post-trial detention, including his time on death row. He will also give evidence of the alleged impact that all this has had on his mental health, physical health, personal life, and his family.
- 2) *Andrew Dottin*, who will testify about the facts of the present case, particularly in relation to the conduct of the criminal proceedings brought against him and the alleged conditions he was made to suffer in pre-trial and post-trial detention, including his time on death row. He will also give evidence of the alleged impact that all this has had on his mental health, physical health, personal life, and his family.

B. Expert witness

(proposed by the representatives)

- 3) *Douglas Mendes QC*, who will render his expert opinion on (i) local law and practice in Trinidad and Tobago and (ii) the relevant international human rights law standards including those laid down in the Convention, as they relate to the issues in dispute including the imposition of the mandatory death penalty and the commutation of sentences.

2. To require the representatives to notify their proposed declarants of the Order, in accordance with the provisions of Articles 50(2) and 50(4) of the Rules of Procedure.
3. To require the State, if it so agrees, under the terms of Article 50(5) of the Rules of Procedure and within the non-extendable term that expires on June 24, 2022, to submit the questions it deems relevant to ask the declarants listed in Operative Paragraph 1, through the Inter-American Court.
4. To require the representatives to coordinate and carry out the necessary steps so that, once the questions, if any, are received, the declarants indicated in Operative Paragraph 1, will answer them in their statements rendered before a public attestor, unless the President decides otherwise when the Registrar transmits the questions. The statements requested herein summoned must be submitted to the Court no later than July 15, 2022.
5. To indicate, in accordance with Article 50(6) of the Rules of Procedure, that when the statements are received, the Registrar must forward them to the State and the Commission so that, should they deem necessary and appropriate, they may present their observations at the latest with their final written arguments or observations, respectively.
6. To require the representatives to inform the persons summoned by the Court to declare before this Court that, pursuant to Article 54 of the Rules of Procedure, when a person summoned to appear or declare before the Court fails to appear or refuses to render a statement without legitimate cause, or when, in the opinion of the Court, he or she has violated his or her oath or solemn declaration, the Court shall inform the State with jurisdiction over that witness so that appropriate action may be taken under the relevant domestic legislation.
7. To transfer, as documentary evidence, the expert opinion rendered by Desmond Allum in the *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*.
8. To order the Court Registrar to forward the document referred to in the previous Operative Paragraph to the State, the representatives, and the Inter-American Commission so that they may submit any observations they deem pertinent, at the latest with their final written arguments or observations, respectively.
9. To inform the representatives that they must cover the expenses of evidence they have proposed, in accordance with Article 60 of the Rules of Procedure, notwithstanding the application of the Victims' Legal Assistance Fund.
10. To require the representatives to inform the Court of the names of the declarants whose affidavits will be covered by the Victims' Legal Assistance Fund and to submit a cost quotation for formalizing the sworn statements in the country of residence of each declarant, no later than June 24, 2022.
11. To order, in accordance with Article 4 of the Rules for the Operation of the Victims' Legal Assistance Fund, that a file be opened on the costs of the instant case, to contain records of all expenditures made in accordance with the parameters authorized by the President.
12. To inform the representatives, the State, and the Inter-American Commission that, in keeping with Article 56 of the Rules of Procedure, they have a period of one month, counted from the day when, in accordance with the provisions set forth in Operative Paragraph 4,

they receive the statements indicated in Operative Paragraph 1, to submit their final written arguments and final written observations, respectively, concerning this case. This term is not subject to extension.

13. To require the Court Registrar to serve notice of the present Order to the Inter-American Commission, the representatives of the alleged victims, and the State.

IACtHR. *Case of Dial and Dottin vs. Trinidad and Tobago*. Order of the President of the Court, June 2, 2022.

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar

So ordered,

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar